

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RUTH M. MARION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17 – cv – 5792
)	
ROUNDY’S SUPERMARKETS, INC.,)	
dba MARIANO’S, a division of)	
THE KROGER CO.,)	
)	
Defendant.)	

**DEFENDANT’S UNOPPOSED MOTION
TO SUBSTITUTE PARTIES**

Defendant Roundy’s Illinois, LLC d/b/a Mariano’s (improperly identified as “Roundy’s Supermarkets, Inc., dba Mariano’s, a division of The Kroger Co.”), pursuant to Rules 12(b)(6) and 12(b)(7) of the Federal Rules of Civil Procedure, respectfully moves this Court for the entry of an Order dismissing Roundy’s Supermarkets, Inc. and The Kroger Co. from this action and substituting Plaintiff’s former employer – Roundy’s Illinois, LLC, d/b/a Mariano’s – as the correct defendant in this action. In support of this motion, Defendant states as follows:

A. ROUNDY’S SUPERMARKETS, INC. IS NOT A PROPER DEFENDANT

1. This is an employment discrimination and retaliation case filed under Title VII, asserting claims under, *inter alia*, the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, *et seq.* (Dkt. No. 1).

2. Plaintiff’s Complaint incorrectly identifies her former employer as “Roundy’s Supermarkets, Inc., dba Mariano’s, a division of The Kroger Co.” (*Id.*).

3. Plaintiff was never employed by Roundy's Supermarkets, Inc.; rather, at all relevant times, Plaintiff was employed by **Roundy's Illinois, LLC**, a Wisconsin limited liability company authorized to conduct business in Illinois under the trade name "Mariano's."

4. Similarly, Plaintiff was never employed by The Kroger Co. – a publicly-traded holding company, and the sole shareholder of Roundy's, Inc.

5. Because neither Roundy's Supermarkets, Inc., nor The Kroger Co., ever employed Plaintiff, they are not subject to liability under Title VII, the ADA or the ADEA, and all claims against those entities should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

6. Similarly, because Roundy's Illinois, LLC was Plaintiff's actual and sole employer, it is a necessary and indispensable party under Rule 19, and Plaintiff's failure to name that specific entity as a defendant is grounds for dismissal of the Complaint pursuant to Rule 12(b)(7).

**B. DEFENDANT SEEKS ONLY TO SUBSTITUTE IN THE CORRECT
PARTY DEFENDANT AND AMEND THE CAPTION**

7. Accordingly, Defendant respectfully requests that Roundy's Supermarkets, Inc. and The Kroger Co. (identified in the current caption as "Roundy's Supermarkets, Inc., dba Mariano's, a division of The Kroger Co.") be dismissed from this lawsuit and that "Roundy's Illinois, LLC, d/b/a Mariano's" be substituted in as the correctly-named defendant.

8. Contemporaneously with this substitution of parties, the Clerk of the Court should amend the caption of this proceeding as follows: "*Ruth M. Marion v. Roundy's Illinois, LLC, d/b/a Mariano's*, Case No. 17 - cv – 5792."

9. This motion is not sought for the purpose of delay (or any other improper purpose), and Plaintiff will not be prejudiced by the relief sought in this motion. To the contrary, all parties will benefit from an Order that streamlines this litigation and allows the proper parties to be at

issue. Plaintiff, in particular, will benefit from not having to amend the Complaint to identify and effect service of process on her correct employer, Roundy's Illinois, LLC.

10. Moreover, Defense counsel has conferred with counsel for Plaintiff, who has confirmed that Plaintiff does not oppose this motion.

WHEREFORE, for all of the reasons set forth above, Defendant Roundy's Illinois, LLC d/b/a Mariano's (improperly identified as "Roundy's Supermarkets, Inc., dba Mariano's, a division of The Kroger Co."), respectfully requests that the Court enter an Order:

- A. Dismissing "Roundy's Supermarkets, Inc." and "The Kroger Co." as defendants in this action, and dismissing all claims against those entities;
- B. Substituting "Roundy's Illinois, LLC d/b/a Mariano's" as the correct defendant in this action, with instructions that the Clerk of the Court amend the caption accordingly; and
- C. Awarding any further relief the Court deems just and proper.

Dated: September 28, 2017

Respectfully submitted,

**ROUNDY'S ILLINOIS, LLC, d/b/a
Mariano's, Defendant**

By: /s/ Christopher S. Griesmeyer
One of Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2017, I electronically filed the foregoing *Defendant's Unopposed Motion to Substitute Parties*, with the Clerk of the Court via the CM/ECF System, which will send notification of such filing to those registered to receive electronic notices via email transmission at the email addresses provided by them:

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